

*the ability of the proposed ward
to understand and meaningfully participate,*

1 In determining whether to waive attendance by the proposed ward, the guardian ad
2 litem shall consider the effect of the proposed ward's attendance on his or her
3 physical or psychological health in relation to the importance of the proceeding and
4 the proposed ward's expressed desires. If the proposed ward is unable to attend the
5 hearing because of residency in a nursing home or other facility, physical
6 inaccessibility, or a lack of transportation and if the proposed ward, guardian ad
7 litem, advocate counsel, or other interested person so requests, the court shall hold
8 the hearing in a place where the proposed ward may attend.

****NOTE: Could there be circumstances under which it would be impossible for the petitioner to ensure attendance?

****NOTE: The last sentence proposed for this subsection is "If the proposed ward is a resident of a nursing home or other facility and is unable personally to attend the hearing, the court shall hold the hearing at the nursing home or other facility if requested by the proposed ward, the proposed ward's counsel, or the guardian ad litem." I omitted this, because it appears to be redundant to the last sentence, if "residency in a nursing home or other facility" is added.

****NOTE: The language referring to "proposed ward" is in accord with the memo.

*under
this
chapter*

9 (5) PRIVACY OF HEARING. Every hearing ~~on a petition under s. 880.07 (1m)~~ shall
10 be ~~open~~ closed, unless the proposed ward or his or her attorney acting with the
11 proposed ward's consent moves that it be ~~closed~~ open. If the hearing is closed, only
12 ~~persons in interest~~ interested persons, including representatives of providers of
13 ~~service and their attorneys and witnesses~~, may be present. *interested persons*

****NOTE: Please see the **** NOTE about psychotropic medication under s. 54.42
(1) (a) (intro.) (renumbered from s. 880.33 (2) (a) 1.).

****NOTE: The definition of "interested person" under s. 54.01 (9) does not include "representatives of providers of service and their attorneys and witnesses," so either that definition must be expanded or these individuals must be deleted from the statute. In the phrase, are the "witnesses" general witnesses or witnesses for the service providers?

14 (6) PROPOSED GUARDIAN INAPPROPRIATE. If the court finds that the proposed
15 guardian is inappropriate, the court shall request that a petition proposing a suitable
16 guardian be filed, shall set a date for a hearing to be held within 30 days, and shall

INSERT
51-13

*court finds any of
the following*

INSERT 52-6

1 require the guardian ad litem to investigate the suitability of a new proposed
2 guardian.

****NOTE: Your proposal would have placed this provision in s. 54.17 (7), but it seems to be procedural. I am not sure, however, if it should be here or in s. 54.46.

3 **54.46 Disposition of petition.** After the hearing under s. 54.44, the court
4 shall dispose of the case in one of the following ways:

5 (1) DISMISSAL OF THE PETITION. If the ~~proposed ward is found not to be an~~
6 ~~incompetent~~, the court shall dismiss the petition. The court may also consider an
7 application by the proposed ward for the appointment of a conservator under s. 54.76.

8 (2) PROTECTIVE ARRANGEMENT; ~~TRANSACTIONS~~; APPOINTMENT OF SPECIAL GUARDIAN.

9 (a) If a proposed ward is found to be a minor ~~or to be an incompetent~~, the court may,
10 without appointing a guardian, do any of the following if the court first considers the
11 interests of dependents and creditors of the ward and whether a guardianship is
12 necessary, given the ward's functional level:

13 1. Authorize, direct, or ratify any transaction or series of transactions
14 necessary to achieve any security, service, or care arrangement that meets the
15 foreseeable needs of the ward.

16 2. Authorize, direct, or ratify a contract, trust, or other transaction related to
17 the ward's property or financial affairs if necessary as a means of providing for the
18 personal needs of or property management for the ward.

19 (b) The court may appoint a special guardian to assist in the accomplishment
20 of any protective arrangement or transaction under par. (a). The special guardian
21 has any authority conferred by the order of appointment, shall report to the court on
22 all actions taken under the order of appointment, and shall serve until discharged
23 by order of the court. The court may approve a reasonable compensation for the

^{not} unless otherwise ordered by the court, each decision made by a co-guardian with respect to the ward must be concurred in by any other co-guardian, or the decision is void.

special guardian, except that, if the court finds that the special guardian has failed to discharge his or her duties satisfactorily, the court may deny or reduce the amount of compensation or remove the special guardian.

****NOTE: Should the compensation language be under subch. V, around s. 54.72 or 54.74, instead of here?

(3) APPOINTMENT OF GUARDIAN; ORDER. If the proposed ward is found to be an incompetent ^{or a spendthrift} or a minor, the court may enter a determination and order appointing a guardian that specifies any powers of the guardian that require court approval, as provided in ss. 54.20 (2) and 54.25 (2), and may provide for any of the following:

****NOTE: I have added "or a minor" after "incompetent"; correct?

****NOTE: I have assumed that s. 54.46 (3) was intended to replace s. 880.12, although s. 54.46 (3) makes no mention of the language under s. 880.12 (2), stats. Correct?

(a) Co-guardians. The court may appoint co-guardians of the person or co-guardians of the estate, subject to any conditions that the court imposes. ~~co-guardian's individual decision is binding unless otherwise ordered by the court.~~

****NOTE: What if one co-guardian's individual decision is in conflict with the other?

****NOTE: Note that I did not here include a power of the guardian to revoke a durable power of attorney, as proposed. Instead, I included that power under s. 54.25 (2) (j).

****NOTE: I am not sure what the decision on this language is under the memo.

(b) Power of attorney for health care. If the proposed incompetent ward has executed a power of attorney for health care under ch. 155, ~~find that the power of attorney for health care instrument should remain in effect.~~ If the court so finds, the court shall so order and shall the court may, for good cause shown, revoke the power of attorney for health care or limit the power of the guardian to make those health care decisions for the ward that are not to be made by the health care authority of the agent under the terms of the power of attorney for health care instrument, unless

except that

only

On Betsy Abramson's advice, I have repealed s. 880.12.

RESTORE TO PLAIN TEXT

RESTORE TO PLAIN TEXT

- 1 ~~the guardian is the health care agent under those terms. The ward's power of~~
2 ~~attorney for health care remains in effect unless so revoked or limited.~~

****NOTE: This provision may require amending the health care power of attorney chapter, which will, if necessary, be done in a subsequent version.

- 3 (c) *Durable power of attorney*. If the ward has executed a durable power of
4 attorney, the court may, for good cause shown, revoke the durable power of attorney
5 or limit the authority of the agent under the terms of the durable power of attorney.

- 6 The ward's durable power of attorney remains in effect unless so revoked or limited.

INSERT 54-6

- 7 (d) *County employee as guardian or conservator*. The court may designate an
8 employee of a county home, county hospital, or county mental hospital to act, if
9 appointed by the court, as guardian of the estate of one or more wards or as
10 conservator for the estate of one or more individuals who so apply, if the ward or
11 individual is a resident of the county home or a patient of the county hospital or
12 county mental hospital. The term of such a guardian or conservator shall terminate,
13 after approval of the employee's accounts by the court, if the employee resigns as
14 guardian or conservator or is removed by the court.

****NOTE: This provision is crafted from s. 880.13 (3); the remainder of that subsection is renumbered and amended as s. 54.46 (5) (c). Please review. I had no idea what a "county institutional employee" is—is what I have drafted accurate?

- 15 (4) FEES AND COSTS OF PETITIONER. (a) Except as provided in par. (b), when a
16 guardian is appointed, the court shall award from the ward's estate payment of the
17 petitioner's reasonable attorney fees and costs, including those fees and costs, if any,
18 related to protective placement of the ward, unless the court finds, after considering
19 all of the following, that it would be inequitable to do so:

- 20 1. The petitioner's interest in the matter, including any conflict of interest that
21 the petitioner may have had in pursuing the guardianship.

INSERT 54-19

4.

← PLAIN

2. The ability of the ward's estate to pay the petitioner's reasonable attorney fees and costs.

3. Whether the guardianship was contested and, if so, the nature of the contest.

4. Any other factors that the court considers to be relevant. ✓ ~~Whether~~

(b) If the court finds that the ward had executed a durable power of attorney under s. 243.07 or a power of attorney for health care under s. 155.05 or had engaged in other advance planning to avoid guardianship, the court may not make the award specified in par. (a).

***NOTE: Your proposed material did not include s. 880.24 (3) (b) as an exception to s. 880.24 (3) (a), but, because s. 880.24 (3) was last affected on June 2, 2000, by 1999 Wisconsin Act 183, your proposed material may have been formulated before that language was enacted. Please review all of s. 880.24 (3), as renumbered in this bill, as compared to your proposed material, to see if I have done what you want. Note that, because the provision *requires* the court to award payment, it was necessary to renumber the provision s. 54.46 (4), rather than include it in s. 54.46 (3). Please also see the ***NOTE under s. 54.32 (renumbered from s. 880.33 (2) (a) 3.).

MATERIAL FROM p. 37, ll. 15-21 GOES HERE

(5) BOND. (a) ~~Form~~ Amount and sufficiency of bond. Upon the appointment of a guardian of the estate of a ward, except as provided under s. 880.60 (9), the court may require a bond given in accordance with ch. 878 and s. 895.345 The order under sub. (3) shall specify the amount of any bond required to be given by the guardian of the estate, conditioned upon the faithful performance of the duties of the guardian of the estate. No bond may be required for the guardian of the person.

(b) Waiver of Bond. Unless required under s. 880.60 (9), the court may waive the requirement of a bond at under any of the following circumstances:

1. At any time in its discretion or if,

2. If so requested in a will wherein in which a nomination appears.

3. ~~Whenever~~ If a guardian has or will have possession of funds of the ward with a total value of \$40,000 \$100,000 or less, and the court may ~~direct~~ directs deposit of the funds in an insured account of a bank, credit union, savings bank, or savings and

INSERT
55-8.

1 loan association in the name of the guardian and the ward and payable only upon
 2 further order of the court. ~~In such event the court may waive the requirement of a~~
 3 ~~bond.~~

4 (c) *Blanket bond for county employee guardian or conservator.* ~~The circuit court~~
 5 ~~may designate one or more persons who are county institutional employees, whose~~
 6 ~~duty it is to act as guardian of one or more estates of incompetent persons upon~~
 7 ~~appointment by the court, or as conservator for the estates of persons making~~
 8 ~~application therefor, who are residents of the county home, patients of the county~~
 9 ~~hospitals or county mental hospitals. The appointments shall be made subject to this~~
 10 ~~chapter. The person, before entering upon duties, shall take an official oath. The For~~
 11 ~~a person who is appointed as a guardian of the estate or as conservator under sub.~~
 12 ~~(3) (d), the court may waive the requirement of a bond or may require the person to~~
 13 ~~give bond, with sufficient sureties, to the judge of the court, in a sum an amount,~~
 14 ~~approved by the court, that is not less than \$1,000 subject to court approval. The~~
 15 ~~bond shall cover the person so designated and appointed in all guardianships and~~
 16 ~~conservatorships to which the person has been or shall be is appointed by the court.~~
 17 ~~Additional The court may require additional bonds may be required from time to~~
 18 ~~time. The expense of surety upon the bonds shall be paid by the county treasurer on~~
 19 ~~the order of the circuit judge. The term of the person appointed shall terminate upon~~
 20 ~~resignation or removal and approval of the person's accounts by the court.~~

****NOTE: Please see the ****NOTE under s. 54.46 (3) (d).

21 (6) ~~WHEN LETTERS TO BE ISSUED~~ LETTERS OF GUARDIANSHIP ~~When a guardian has~~
 22 ~~given bond as required and the bond has been approved by the judge~~ court, letters
 23 ~~under the seal of the court shall be issued to the guardian.~~

INSERT 56-23

****NOTE: Should there be letters for the guardian of the person? If so, such a guardian does not give bond; what would trigger issuance of the letters?

MATERIAL FROM p. 10, ll. 10 to 16, plus **** NOTE GOES HERE

INSECT 57-1
✓
1 **54.48 Protective placement and protective services.** A finding of
2 incompetency and appointment of a guardian under this subchapter chapter is not
3 grounds for involuntary protective placement. Such or the provision of protective
4 services. Protective placement and the provision of protective services may be made
5 only in accordance with s. 55.06 ch. 55. Temporary (B)

6 **54.50 Limited term guardianships. (1) TEMPORARY GUARDIAN. (a)**
7 *Standard.* If it is demonstrated to the court that a proposed ward's particular
8 *, including the needs of the proposed ward's dependents,* situation requires the immediate appointment of a temporary guardian of the person
9 or estate, the court may appoint a temporary guardian under this section. ✓

****NOTE: The terms "proposed ward" and "immediate appointment" are in accord with the memo. ✓

10 (b) *Appointment Duration and extent of authority.* If, after consideration of a
11 petition for temporary guardianship, the court finds that the welfare of a minor,
12 spendthrift or an alleged incompetent requires the immediate appointment of a
13 guardian of the person or of the estate, or of both, it The court may appoint a
14 temporary guardian for a ward for a period not to exceed 60 days unless further
15 extended for 60 days by order of the court. The court may extend the period only
16 once, except that the court may extend this period for good cause shown for one
17 additional 60-day period. The court may impose no further temporary guardianship
18 on the ward for at least 90 days after the expiration of the temporary guardianship
19 and any extension. The court's determination and order appointing the temporary
20 guardian shall specify the authority of the temporary guardian and shall be limited
21 to those acts that are reasonably related to the reasons for appointment that are
22 specified in the petition for temporary guardianship. The authority of the temporary

1 guardian shall be ~~is~~ limited to the performance of duties respecting specific property,
2 or to the performance of particular those acts, as stated in the order of appointment.
3 ~~All provisions of the statutes concerning the powers and duties of guardians shall~~
4 ~~apply to temporary guardians except as limited by the order of appointment. The~~
5 ~~temporary guardian shall make the reports the court directs and shall account to the~~
6 ~~court upon termination of authority. The court assigned to exercise jurisdiction~~
7 ~~under chs. 48 and 938 has exclusive jurisdiction over the appointment of a temporary~~
8 ~~guardian of a minor for medical purposes but shall proceed in accordance with this~~
9 section Unless the court first specifically approves, the temporary guardian may not
10 sell real estate or expend an amount in excess of \$2,000. and orders bond

****NOTE: I have stricken the language limiting further temporary guardianships
on the same ward, in accord with the memo.

11 (c) *Procedures for appointment.* All of the following procedures apply to the
12 appointment of a temporary guardian:

13 1. Any person may petition for the appointment of a temporary guardian for
14 an individual. The petition shall contain the information required under s. 54.34 (1),
15 shall specify reasons for the appointment of a temporary guardian and the powers
16 requested for the temporary guardian, and shall include a petition for appointment
17 of a guardian of the person or estate or state why such a guardianship is not sought.

18 2. The petitioner shall serve the petition and order for hearing on the proposed
19 ward before the hearing or as soon as practicable after the hearing, but not later than
20 3 calendar days after the hearing.

21 3. The court shall appoint a guardian ad litem, who shall attempt to meet with
22 the proposed ward before the hearing or as soon as is practicable after the hearing,
23 but not later than 7 calendar days after the hearing. The guardian ad litem shall

INSERT 58-20

1 report to the court on the advisability of the temporary guardianship at the hearing
2 or not later than 10 calendar days after the hearing.

***NOTE: Your proposed material makes no mention of s. 880.15 (1s) (notice of petition, including the right to counsel and the right to petition for reconsideration or modification of the temporary guardianship). I have repealed this provision, but am concerned about possible due process issues that may arise, particularly because s. 54.50 (1) (c) 2. permits the petition to be served on the proposed ward *after* the hearing.

***NOTE: Your proposed material also makes no mention of s. 880.15 (2), which requires a bond from the temporary guardian. If you had intended that the provisions of s. 54.46 (5) (renumbered from s. 880.13) apply, please let me know. Or had you intended that no bond requirement exist? I have repealed s. 880.15 (2) for now.

3 4. The court shall hold a hearing on the temporary guardianship no earlier than
4 48 hours after the filing of the petition unless good cause is shown. At the hearing,
5 the petitioner shall provide a report or testimony from a physician or psychologist
6 that indicates that there is a reasonable likelihood that the proposed ward is ~~an~~
7 incompetent. The guardian ad litem shall attend the hearing in person or by
8 telephone or, instead, shall provide to the court a written report concerning the
9 proposed ward for review at the hearing.

***NOTE: Please review my version of the last sentence, which differs from that in your proposal. Have I captured your intent?

***NOTE: The language permitting testimony from a physician or psychologist is in accord with the memo.

10 5. If the court appoints a temporary guardian, ~~the court shall so notify the ward~~
11 ~~not later than 3 calendar days after the hearing.~~ *and if* If the ward, his or her counsel, the
12 guardian ad litem, or an interested party requests, the court shall order a rehearing
13 on the issue of appointment of the temporary guardian within 10 calendar days after
14 the request. If a rehearing is requested, the temporary guardian may take no action
15 to expend the ward's assets *pending a rehearing,* without approval by the court.

***NOTE: Your proposal does not specify which party is to provide notice to the ward, so I have required the court to do so. Does that meet your intent?

***NOTE: Your proposal does not mention s. 880.15 (3) (requiring powers and duties of the temporary guardian to cease at termination of the temporary guardianship and requiring a report and accounting by the temporary guardian). Do you intend that this provision apply? I have repealed s. 880.15 (3) for now.

✓
INSERT 60-1

***NOTE: I have repealed s. 880.15 (1s), (2), and (3).

, notwithstanding s.
54.01 (10)

1 (2) CERTAIN ADMISSIONS TO FACILITIES. (a) In this ~~section~~ subsection,
2 "incapacitated" means unable to receive and evaluate information effectively or to
3 communicate decisions to such an extent that the individual ~~lacks the capacity to~~ is
4 manage his or her health care decisions, including decisions about his or her unable
5 post-hospital care.

6 (b) An individual under sub. (3) par. (c) may consent to admission, ~~directly from~~
7 ~~a hospital to a facility, as defined in s. 50.01 (1m),~~ of an incapacitated individual who
8 does not have a valid power of attorney for health care and who has not been
9 adjudicated ~~an~~ incompetent under ch. 880 54, if all of the following apply:

***NOTE: Is my definition of "facility" what you want? It conforms to current law.

10 1. No person who is listed under sub. (3) par. (c) in the same order of priority
11 as, or higher in priority than, the individual who is consenting to the proposed
12 admission disagrees with the proposed admission.

13 2. a. Except as provided in subd. 2. b., no person who is listed under sub. (3) par.
14 (c) and who resides with the incapacitated individual disagrees with the proposed
15 admission.

16 b. Subdivision 1. 2. a. does not apply if ~~any of the following applies: the~~
17 individual who is consenting to the proposed admission resides with or is the spouse
18 of the incapacitated individual.

19 3. The individual for whom admission is sought is not diagnosed as
20 developmentally disabled or as having a mental illness at the time of the proposed
21 admission.

1 4. A petition for guardianship for the individual under s. 880.07 54.34 and a
2 petition for protective placement of the individual under s. 55.06 (2) are filed prior
3 to the proposed admission.

4 (c) The following individuals, in the following order of priority, may consent to
5 an admission under ~~sub. (2)~~ par. (b):

- 6 1. The spouse of the incapacitated individual.
- 7 2. An adult son or daughter of the incapacitated individual.
- 8 3. A parent of the incapacitated individual.
- 9 4. An adult brother or sister of the incapacitated individual.
- 10 5. A grandparent of the incapacitated individual.
- 11 6. An adult grandchild of the incapacitated individual.
- 12 7. An adult close friend of the incapacitated individual.

13 (d) A determination that an individual is incapacitated for purposes of ~~sub. (2)~~
14 par. (b) shall be made by 2 physicians, ~~as defined in s. 448.01 (5),~~ or by one physician
15 and one licensed psychologist, ~~as defined in s. 455.01 (4),~~ who personally examine the
16 individual and sign a statement specifying that the individual is incapacitated. Mere
17 old age, eccentricity, or physical disability, either singly or together, are insufficient
18 to make a finding that an individual is incapacitated. Neither of the individuals who
19 make a finding that an individual is incapacitated may be a relative, as defined in
20 s. 242.01 (11), of the individual or have knowledge that he or she is entitled to or has
21 a claim on any portion of the individual's estate. A copy of the statement shall be
22 included in the individual's records in the facility to which he or she is admitted.

****NOTE: I have defined "physician" and "psychologist."

23 (e) 1. Except as provided in ~~par. (b)~~ subd. 2., an individual who consents to an
24 admission under this ~~section~~ subsection may, for the incapacitated individual, make

1 health care decisions to the same extent as a guardian of the person may and
2 authorize expenditures related to health care to the same extent as a guardian of the
3 estate may, until the earliest of the following:

- 4 a. Sixty days after the admission to the facility of the incapacitated individual.
- 5 b. Discharge of the incapacitated individual from the facility.
- 6 c. Appointment of a guardian for the incapacitated individual.

7 2. An individual who consents to an admission under this ~~section~~ subsection
8 may not authorize expenditures related to health care if the incapacitated individual
9 has an agent under a durable power of attorney, ~~as defined in s. 243.07 (1) (a),~~ who
10 may authorize expenditures related to health care.

****NOTE: I have defined "durable power of attorney." ✓

11 (f) If the incapacitated individual is in the facility after 60 days after admission
12 and a guardian has not been appointed, the authority of the person who consented
13 to the admission to make decisions and, if ~~sub. (5) (a)~~ par. (e) 1. applies, to authorize
14 expenditures is extended for 30 days for the purpose of allowing the facility to initiate
15 discharge planning for the incapacitated individual.

16 (g) An individual who consents to an admission under this ~~section~~ subsection
17 may request that an assessment be conducted for the incapacitated individual under
18 the long-term support community options program under s. 46.27 (6) or, if the
19 secretary has certified under s. 46.281 (3) that a resource center is available for the
20 individual, a functional and financial screen to determine eligibility for the family
21 care benefit under s. 46.286 (1). If admission is sought on behalf of the incapacitated
22 individual or if the incapacitated individual is about to be admitted on a private pay
23 basis, the individual who consents to the admission may waive the requirement for

1 a financial screen under s. 46.283 (4) (g), unless the incapacitated individual is
2 expected to become eligible for medical assistance within 6 months.

3 (h) If the allegedly incapacitated individual, his or her guardian ad litem, or
4 any interested person objects to the admission, the individual, guardian ad litem, or
5 person may request the court in which the guardianship petition is pending to hold
6 a hearing on whether the individual is incapacitated or whether the admission shall
7 continue before the guardianship hearing. If requested, the court shall hold such a
8 hearing within 7 calendar days after receipt of the request.

****NOTE: What disposition should the court make if it decides that the person isn't
incapacitated or the admission should not continue?

****NOTE: The change in this paragraph to 7 calendar days is in accord with the
memo.

****NOTE: The memo states that s. 50.06, stats., should also be amended to be
parallel to this change. I am confused by this; the bill rennumbers all of s. 50.06 into ch.
54. What parallel change would this be?

9 **54.52 Standby guardianship. (1) A person may at any time bring a petition**
10 **for the appointment of a standby guardian of the person or property or both estate**
11 **of a ~~minor or person found incompetent under s. 880.08~~ to assume the duty and**
12 **authority of guardianship on the death, incapacity or resignation of the initially**
13 **appointed guardian may be brought under this chapter at any time. A petition for**
14 **the appointment of a standby guardian of the person or property or both of a minor**
15 **to assume the duty and authority of guardianship on the incapacity, death, or**
16 **debilitation and consent, of the minor's parent shall be brought under s. 48.978 an**
17 **individual who is determined to be an incompetent under s. 54.10 or a minor.**

18 (2) At any hearing conducted under this section the court may designate one
19 or more standby guardians of the person or property estate whose appointment shall
20 become effective immediately upon the death, incapacity, or resignation of the
21 initially appointed guardian or during a period, as determined by the initially

inability

or a spendthrift

INSERT
63-8

1 appointed guardian, when the initially appointed guardian is temporarily unable to
2 fulfill his or her duties, including during an extended vacation or illness. The powers
3 and duties of the standby guardian shall be the same as those of the initially
4 appointed guardian. The standby guardian shall receive a copy of the court order
5 establishing or modifying the initial guardianship, and the order designating the
6 standby guardian. Upon assuming office, the standby guardian shall so notify the
7 court.

****NOTE: Does the language "during a period, as determined by the initially appointed guardian" meet the intent of the memo?

****NOTE: Your proposal contains two provisions concerning standby guardians for minors. 1997 Wisconsin Act 334 created s. 48.978 (appointment or designation of standby guardian of a child). Because these provisions exist in current law, I have not drafted the provisions in your proposal at this time. Please review.

INSERT 64-7 NOTE

8 **54.54 Successor guardian. (1) APPOINTMENT.** When a guardian dies, is
9 removed by order of the court, or resigns and the resignation is accepted by the court,
10 the court, on its own motion or upon petition of any interested person, may appoint
11 a competent and suitable person as successor guardian. The court may, upon request
12 of any interested person or on its own motion, direct that a petition for appointment
13 of a successor guardian be heard in the same manner and subject to the same
14 requirements as provided under this chapter for an original appointment of a
15 guardian.

16 **(2) NOTICE.** If the appointment under sub. (1) is made without hearing, the
17 successor guardian shall provide notice to the ward and all interested persons of the
18 appointment, the right to counsel and the right to petition for reconsideration of the
19 successor guardian. The notice shall be served personally or by mail not later than
20 10 days after the appointment.

21 **SUBCHAPTER V**

POST-APPOINTMENT MATTERS

1
2 **54.60 Inventory. (1) INVENTORY REQUIRED.** ~~When a~~ The guardian of the estate
3 ~~has been appointed an inventory shall be made in the same manner and subject to~~
4 ~~the same requirements as are provided for the inventory of a decedent's estate. An~~
5 ~~appraisal of all or any part of the ward's estate shall be made when ordered by the~~
6 ~~court prepare an inventory that lists all of the ward's property and interests in~~
7 ~~property, including any marital property interest, regardless of how the asset is~~
8 ~~titled.~~

9 **(2) CONTENTS OF INVENTORY.** The inventory shall provide all of the following
10 information with respect to each asset:

11 (a) How the asset is held or titled.

12 (b) The name and relationship to the ward of any co-owner.

13 (c) The marital property classification of the property and, for any property that
14 is marital property, the spouse who has management and control rights with respect
15 to the property.

16 **(3) TIME FOR FILING.** The guardian of the estate shall file the initial inventory
17 within 60 days after appointment, unless the court extends or reduces the time.

18 **(4) NOTICE OF INVENTORY.** The court shall specify the persons to whom the
19 guardian shall provide copies of the inventory.

20 **(5) FEE.** The guardian of the estate shall pay the fee specified in s. 814.66 (1)

21 (b) 2. at the time the inventory ~~is~~ filed.

22 **(6) APPRAISAL.** The court may order that the guardian of the estate appraise
23 all or any part of the ward's estate.

****NOTE: I worded this a bit differently than does your proposal; it is unnecessary
to require by statute that the guardian do what a court orders.

includes ✓

1 (7) VERIFICATION, EXAMINATION IN COURT. Every guardian shall verify by the
2 guardian's oath that every inventory required of the guardian and verification shall
3 be to the effect that the inventory is true of all property which that belongs to his or
4 her decedent's estate or his or her ward, which has come to the estate of the ward,
5 in the guardian's possession or knowledge, and that upon diligent inquiry the
6 guardian has not been able unable to discover any property belonging to the estate
7 or ward ~~which is not included therein~~ that the inventory does not include. The court,
8 at the request of any party interested, or on its own motion, may examine the
9 guardian on oath ~~in relation thereto,~~ as to the inventory or ~~in relation to any~~
10 ~~supposed omission from the inventory.~~

****NOTE: The language striking reference to the decedent's estate is in accord with
the memo. ✓

11 **54.62 Accounts. (1) ANNUAL REPORTS.** ~~Every~~ Except as provided in sub. (3)
12 or unless waived by a court, every guardian, ~~except~~ including a corporate guardian,
13 shall, prior to April 15 of each year, file an account under oath specifying that
14 specifies the amount of property received and held or invested by the guardian, the
15 nature and manner of the investment, and the guardian's receipts and expenditures
16 during the preceding calendar year. ~~When ordered by the court,~~ The court may order
17 the guardian shall within 30 days to render and file, within 30 days, a like account
18 ~~for any shorter term less than a year.~~ In lieu of the filing of these accounts before
19 April 15 of each year, the court may, by appropriate order upon motion of the
20 guardian, direct the guardian of an estate to ~~thereafter~~ render and file the annual
21 accountings within 60 days after the anniversary date of the guardian's qualification
22 as guardian, with the accounting period from the anniversary date of qualification
23 to the ensuing annual anniversary date. ~~When any guardian of a minor has custody~~

1 of the ward and the care of the ward's education, the guardian's report shall state the
2 time that the ward attended school during the time for which the account is rendered
3 and the name of the school. The guardian shall also report any change in the status
4 of the surety upon the guardian's bond. If the court determines it to be in the ward's
5 best interests, the court may specify the persons to whom the guardian shall
6 distribute copies of the account. *depository accounts* *evidence of* *of the ward's*

7 (2) DISPLAY OF ASSETS. Upon rendering the account the guardian shall produce
8 for examination by the court, or ~~some~~ *by a* person satisfactory to the court, all
9 ~~reported~~ securities, evidences of deposit, and ~~investments reported~~, which shall be
10 described in the account in sufficient detail so that they may be readily identified.
11 ~~It shall be ascertained~~ The court or person satisfactory to the court shall ascertain
12 whether the securities, evidences of deposit, and ~~investments~~ *other* correspond with the
13 account. *evidence of* *depository accounts*

14 (3) SMALL ESTATES. (a) If a ward's estate does not exceed \$5,000 in value, the
15 guardian need not file an account under sub. (1) unless otherwise ordered to do so
16 by the court. For the purposes of this paragraph, the value of the ward's estate does
17 not include the ward's income, any burial trust possessed by the ward, or any term
18 or other life insurance policy that is irrevocably assigned to pay for the disposition
19 of the ward's remains at death.

****NOTE: I wasn't sure if "term life insurance" was modified by "irrevocably assigned..." Have I drafted this as you intended?

20 (b) If the ward's estate, as calculated under par. (a), increases above \$5,000 in
21 value, the guardian shall so notify the court, which shall determine if an annual
22 account under sub. (1) or a final account under s. 54.66 is required.

INSERT
67-13

1 (4) ANNUAL ACCOUNTS OF MARRIED WARDS. (a) For a married ward, the court may
2 waive filing of an annual account under sub. (1) or permit the filing of a modified
3 annual account, which shall be signed by the ward's guardian and spouse and shall
4 consist of all of the following:

5 1. Total assets of the ward, as determined under ch. 766, on January 1 of the
6 year in question.

7 2. Income in the name of the ward, without regard to ch. 766, and the ward's
8 joint income.

9 3. Expenses incurred on behalf of the ward, including the ward's proportionate
10 share of household expenses if the ward and the ward's spouse reside in the same
11 household, without regard to ch. 766.

12 4. Total assets of the ward, as determined under ch. 766, on December 31 of the
13 year in question.

 ****NOTE: I may have questions about this subsection after consulting with the
Domestic Relations drafter, who is presently unavailable.

14 (b) The court shall provide notice of the waiver under par. (a) to any adult child
15 of the ward.

16 (5) EXAMINATION OF ACCOUNTS. The account shall be promptly examined under
17 ~~the court's direction and if it as the court directs. If the account~~ is not satisfactory
18 ~~it shall be examined on 8 days' notice and, the court shall make such order thereon~~
19 ~~order action~~ as justice requires. ~~Notice and shall direct that notice be provided to the~~
20 ~~guardian may be served personally or by certified mail as the court directs. When~~
21 ~~the examination of a guardian's account is upon notice. If notice is provided to the~~
22 ~~guardian under this subsection, the court may appoint a guardian ad litem of for the~~
23 ward may be appointed.

income or assets

(6) ACCOUNTING BY AGENT THIRD PARTIES TO GUARDIAN. ~~The circuit court, upon the application of any~~ If a guardian appointed by it a court so requests, the court may order any person who has been entrusted by the guardian with any part of the estate of a decedent or ward to appear before the court, and may require the person to render a full account, on oath, of any property or papers belonging to of the estate which that have come to the person's possession and of his or her proceedings thereon action regarding the property or papers. If the person refuses to appear and render an account, the court may proceed against him or her as for contempt.

INSERT 69-8
(7) NOTICE OF FINAL ACTION ON AN ACCOUNT. ~~No action by the court upon any on an account shall be is final unless it is upon the court first directs that notice be provided to interested parties.~~ *to all of the following:* *guardian* *provided*

****NOTE: It is not clear to whom notice under this subsection must be provided. "Interested parties" is not defined; is it suitable here, or should it be "interested person"? Should, instead, notice be provided to the guardian and the ward only?

INSERT 69-11

54.63 Expansion of order of guardianship; procedure. (1) If the guardian or another interested person submits to the court a written statement with relevant accompanying support requesting the removal of rights from the ward and transfer to the guardian of powers in addition to those specified in the order of appointment of the guardian, based on an expansion of the ward's incapacity, the court shall do all of the following:

- (a) Appoint a guardian ad litem for the ward. *Order that*
- (b) ~~Provide~~ *all of the following: #1.* notice to the county department of social services or human services if the ward is protectively placed or receives long-term support services as a public benefit. *is provided*

INSERT 69-21
(2) (a) If, after 10 days after the court has provided notice under sub. (1) (b), or earlier if the court determines that the circumstances are extraordinary, no person

including notice concerning potential court action if circumstances are extraordinary, be given

1 submits to the court an objection to the request under sub. (1), the court may amend
2 the order entered under s. 54.46 (3) and enter a determination and the amended
3 order that specifies any change in the powers of the guardian. *is provided*

4 (b) If, within 10 days after *the court has provided* notice under sub. (1) (b), a
5 person submits to the court an objection to the request under sub. (1), any person may
6 request a hearing under the procedure specified in s. 54.64 (2).

****NOTE: Please review this language very carefully; it is in accord with the memo. Because it appears to be a post-appointment matter, I have placed it in s. 54.63. It appears, under the language proposed, that only the county department of social services or human services receives notice. Shouldn't the ward and the guardian (if the guardian is other than the person submitting the statement under sub. (1)) at least also receive notice? As it is written, the court may act after 10 days after providing the notice, but the notice is only provided if the ward is protectively placed or receiving long-term care—what if neither of these is true, i.e., what if there is no notice to send out? Should the notice be required to state that the circumstances are extraordinary, if they are, thereby indicating that the court may act before 10 days are up?

7 **54.64 Duration Review and termination of guardianship; review. (1)**

8 **DURATION.** Any guardianship of an individual found to be *an* incompetent under this
9 chapter shall continue during the life of the incompetent, or ward, until terminated
10 by the court, or as provided under sub (3) or (4). *Upon reaching the age of majority,*
11 ~~an incompetent subject to guardianship under this chapter shall be reviewed by the~~
12 ~~court for the purpose of determining whether the guardianship should be continued~~
13 ~~or modified. The court shall make a specific finding of any rights under s. 880.33 (3)~~
14 ~~which the individual is competent to exercise at the time.~~

****NOTE: Your proposed material renumbered and amended s. 880.26 (2) (d) (a guardianship of the estate must terminate when a ward dies, except when the estate is minimal). I have, instead, repealed s. 880.26 (2) (d) because (a) the termination upon death is redundant to s. 54.64 (1) (renumbered from s. 880.34 (1); and (b) the exception seems to be in conflict with s. 54.66 (2) (renumbered from s. 880.25 (3)).

15 **(2) REVIEW AND MODIFICATION.** (a) A ward who is 18 years of age or older, any
16 interested person acting on the ward's behalf, or the ward's guardian may petition
17 for a review of incompetency. Upon such at any time after 180 days after any previous

circumstances ✓

1 hearing under s. 54.44, or at any time if the court determines that exigent
2 circumstance, including presentation of new evidence, requires a review. If a petition
3 for review is filed, the court shall conduct do all of the following:

- 4 1. Appoint a guardian ad litem.
- 5 2. Fix a time and place for hearing.
- 6 3. Designate the persons who are entitled to notice of the hearing and designate
7 the manner in which the notice shall be given.
- 8 4. Conduct a hearing at which the ward shall be is present and shall have has
9 the right to a jury trial, if demanded. The ward shall also have the right to counsel
10 and the court shall appoint counsel if the ward is unable to obtain counsel. If the
11 ward is indigent, counsel shall be provided at the expense of the ward's county of legal
12 settlement.

***NOTE: Please review to see if the language limiting review to after six months after the previous hearing or at any time under special circumstances adequately meets the memo's intent. ✓

13 (b) The ward has the right to counsel for purposes of the hearing under par. (a).
14 Notwithstanding any finding of incompetence for the ward, the ward may retain and
15 contract for the payment of reasonable fees to an attorney in connection with
16 proceedings involving review of the terms and conditions of the guardianship,
17 including the question of incompetence. The court shall appoint counsel if the ward
18 is unable to obtain counsel. If the ward is indigent the county of jurisdiction for the
19 guardianship shall provide counsel at the county's expense. ✓

***NOTE: I deleted "whether or not the ward is successful in such a proceeding" because it seems unnecessary. ✓

20 (c) After a hearing under sub. (4) par. (a) or on its own motion, a court may ✓
21 terminate or modify a the guardianship of an incompetent.

*, including restoring
certain of the ward's rights.* ✓

*the selection of
whom is
subject to
court approval,*

or a ward who was formerly found to be a spendthrift to be capable of handling his or her property

(3) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE PERSON. A guardianship of the person shall terminate when if any of the following occurs:

***NOTE: Your proposal does not include treatment of s. 880.26 (1) (a) and (b) (a guardianship of the person must terminate when a minor ward who is not an incompetent attains majority or a minor ward marries). I have, however, not repealed these provisions, because I thought perhaps that not including them was inadvertent. Please review.

(a) The court adjudicates a former ward who was formerly found to be an incompetent to be competent no longer an incompetent.

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

INSERT 72-6

(4) GUARDIANSHIP TERMINATION OF GUARDIANSHIP OF THE ESTATE. A guardianship of the estate shall terminate when if any of the following occurs:

***NOTE: Your proposed material does not include treatment of s. 880.26 (2) (a) and (b) (a guardianship of the estate must terminate when a minor ward who is not an incompetent attains majority or a minor ward marries and the court approves the termination). I have, however, not repealed these provisions, because I thought perhaps that not including them was inadvertent. Please review.

ward who was formerly found to be

(a) The court adjudicates a former incompetent or a spendthrift to be capable of handling his or her property competent.

keep striking

RESTORE TO PLAIN TEXT

(b) The ward changes residence from this state to another state and a guardian is appointed in the new state of residence.

no longer incompetent or a ward who was formerly found to be a spendthrift to be

(5) DEPLETED GUARDIANSHIPS GUARDIANSHIP. When the If a court determines that the estate of the a ward is below \$5,000 and reduced to a point where it is to the advantage of the ward to dispense with the guardianship, the court may terminate do one of the following:

(1)
(a) Terminate the guardianship and authorize order disposition of the remaining assets as provided by s. 880.04 54.12 (2). The court, as a part of the disposition, may order a suitable amount paid to the county treasurer under order of the court or reserved in the guardianship to assure the ward a decent burial, a

1 ~~marker and care for the grave. In the case of an insolvent guardianship, the court~~
2 ~~may order an amount not exceeding \$400 reserved in the guardianship or paid to the~~
3 ~~county treasurer under order of the court to assure the ward a decent burial the~~
4 ~~guardian to make appropriate financial arrangements for the burial or other~~
5 ~~disposition of the remains of the ward.~~

6 (b) Continue the guardianship, but waive requirements for a bond for the
7 guardian and for accounting by the guardian. *or special administrator*

8 **54.66 Final accounts. (1) SETTLEMENT OF ACCOUNTS RENDER FINAL ACCOUNT**
9 ~~Upon termination of~~ If a court terminates a guardianship, or ~~upon resignation,~~
10 ~~removal or death of a guardian, such resigns, is removed, or dies, the guardian or the~~
11 ~~guardian's personal representative shall forthwith promptly render the guardian's~~
12 ~~a final account to the court and to the former ward, the successor guardian, or the~~
13 ~~deceased ward's personal representative as the case may be. Upon approval of the~~
14 ~~account and filing proper receipts the guardian shall be discharged and the~~
15 ~~guardian's bond released, as appropriate. If the ward dies and the guardian and the~~
16 ~~deceased ward's personal representative are the same person, the deceased ward's~~
17 ~~personal representative shall give notice of the termination and rendering of the~~
18 ~~final account to all interested persons of the ward's estate.~~

****NOTE: Does the last sentence capture the memo's intent?-

19 (2) SMALL ESTATES. ~~When the whole estate of a ward or of several wards jointly,~~
20 ~~under the same guardianship, does not exceed \$1,000 in value, the~~ The guardian
21 ~~shall be required to render of a ward with a small estate, as specified in s. 54.62 (3)~~
22 ~~(a), need not file a final account only upon the termination of the guardian's~~
23 ~~guardianship, unless otherwise ordered by the court. The guardian shall instead~~

1 provide the court with a list of the ward's assets that remain at the time the
2 guardianship terminates, including at the death of the ward.

3 (3) DISCHARGE. After approving the final account and after the guardian has
4 filed proper receipts, the court shall discharge the guardian and release the
5 guardian's bond.

****NOTE: I wasn't sure who files the receipts under this subsection. Is my drafting accurate?

6 (4) SUMMARY SETTLEMENT OF SMALL ESTATES. ~~When~~ If a ward dies leaving an
7 estate ~~which~~ that can be settled summarily under s. 867.01, the court may approve
8 ~~such~~ the settlement and distribution by the guardian, without the necessity of
9 appointing a personal representative.

10 **54.68 Review of conduct of guardian. (1) CONTINUING JURISDICTION OF**
11 **COURT.** The court that appointed the guardian shall have continuing jurisdiction over
12 the guardian.

13 (2) CAUSE FOR COURT ACTION AGAINST A GUARDIAN. Any of the following, if
14 committed by a guardian with respect to a ward or the ward's estate, constitutes
15 cause for a remedy of the court under sub. (3): 4

16 (a) Failing to timely file an inventory or account, as required under this
17 chapter, that is accurate and complete.

18 (b) Committing fraud, waste, or mismanagement.

19 (c) Abusing or neglecting the ward or knowingly permitting others to do so.

****NOTE: This provision is from the memo. ✓

20 (d) Engaging in self-dealing.

21 (e) Failing to adequately provide for the personal needs of the ward from
22 available estate assets and public benefits.

1 (f) Failing to exercise due diligence and reasonable care in assuring that the
2 ward's personal needs are being met in the least restrictive environment consistent
3 with the ward's needs and functional capacities. *in capacities* ✓

4 (g) Failing to act in the best interests of the ward.

5 (h) Failing to disclose conviction for a crime that would have prevented
6 appointment of the person as guardian.

****NOTE: Pars. (g) and (h) are in accord with the memo. ✓

7 (i) Other than as provided in pars. (a) to (h), failing to perform any duties of a
8 guardian or performing acts prohibited to a guardian as specified in ss. 54.18, 54.19,
9 54.20, 54.22, 54.25, and 54.62.

****NOTE: The order of subs. (2) and (3) in your proposal is here reversed, in accord
with the memo. ✓

****NOTE: This provision needs work to clarify it. The memo specifies ss. 880.19,
880.192, 880.251, and 880.39 (as renumbered under this draft) for this paragraph.
However, ss. 880.192 and 880.251 are not touched by your proposal, and s. 880.39 goes
to immunity for the guardian. What would you like for me to do with these? ✓

10 (3) REMEDIES OF THE COURT. If petitioned by any party and after finding cause
11 as specified in sub. (2), a court may do any of the following: *or on the court's own motion*

12 (a) Order the guardian to file an inventory or other report or account required
13 of the guardian.

14 (b) Require the guardian to reimburse the estate of the ward for losses incurred
15 as the result of the guardian's breach of a duty to the ward.

16 (c) Impose a financial penalty on the guardian, including denial of
17 compensation for the guardian.

18 (d) Remove the guardian.

19 (e) Enter any other order that may be necessary or appropriate to compel the
20 guardian to act in the best interests of the ward or to otherwise carry out the
21 guardian's duties.

****NOTE: I did not include enforcement of this order by civil contempt, as in your proposal; that language is unnecessary, since the definition of "contempt of court" under s. 785.01 (1) (b), stats., subjects anyone to contempt proceedings for disobedience to the order of a court under s. 785.02, stats.

****NOTE: Should there not also be some provision for notice to the guardian? A hearing?

(4) REMOVAL OF PAID GUARDIAN. The court may remove a paid guardian if changed circumstances indicate that a previously unavailable volunteer guardian is available to serve and that the change would be in the best interests of the ward.

(5) FEES AND COSTS IN PROCEEDINGS. In any proceeding under sub. (2) or (4), all of the following apply:

(a) The court may require the guardian to pay personally any costs of the proceeding, including costs of service and attorney fees.

****NOTE: I did not draft language in your proposal that authorizes the court to require the guardian to pay "any other penalties the court determines are appropriate." Such a penalty must be specific and be a forfeiture, for a civil action, or a criminal penalty. Please also note that s. 939.61, stats., provides a penalty if a statute prohibiting an act does not specify one.

****NOTE: I did not draft "in matters relating to this section," as in the memo, because of the language I created for sub. (5) (intro.).

(b) Notwithstanding a finding of incompetence, a ward who is petitioning the court under sub. (2) may retain an attorney, the selection of whom is subject to court approval, and contract for the payment of fees, regardless of whether or not the guardian consents or whether or not the court finds cause under sub. (2).

****NOTE: The language "the selection . . . approval" is in accord with the memo.

54.70 Duties in of guardian ad litem for reviews. In any review of a protective placement under s. 55.06 or of a protective service services order under s. 55.05, the guardian ad litem shall do all of the following:

(1) Interview the ward to explain the review procedure, the right to an independent evaluation, and the right to counsel and the right to a hearing.

RESTORE TO
PLAINTEXT

****NOTE: I have amended this provision in light of the memo; if *Goldie H.* requires that a *Watts* review include a hearing, that would be subsumed under "review procedure" and it's superfluous for the GAL to explain that the ward has the right to a hearing.

1 (2) Provide the information under par. (a) sub. (1) to the ward in writing.

2 (3) Secure Request that the court order an additional medical, psychological,
3 or other evaluation of the ward, if necessary.

****NOTE: This language comports with the memo.

4 (4) Review the annual report and relevant reports on the ward's condition and
5 placement.

6 (5) Review the ward's condition, placement, and rights with the guardian.

7 (6) If relevant, report to the court that the ward objects to the finding of
8 continuing incompetency, the present or proposed placement, the position of the
9 guardian, or the recommendation of the guardian ad litem as to the best interests of
10 the ward or if there is ambiguity about the ward's position on these matters.

11 (6m) Provide a summary written report to the court.

12 (7) If relevant, report to the court that the ward requests the appointment of
13 counsel or an adversary hearing. RESTORE TO PLAIN TEXT

****NOTE: I have amended this provision in light of the memo. If *Goldie H.* requires a hearing in every *Watts* review, it is unnecessary for the GAL to report to the court that the ward requests an adversary hearing. Would a hearing under *Goldie H.* require appointment of counsel?

14 (9m) Attend the hearing.

****NOTE: This language comports with the memo. Because the memo expresses agreement about the fact that the *Goldie H.* case requires "some kind of hearing" in every *Watts* review, please also see my changes to 54.70 (1) and (7) (renumbered and amended from s. 880.331 (5) (a) and (g)).

INSERT
77-14

15 **54.72 Guardian compensation and reimbursement.** A guardian of the
16 person or a guardian of the estate is entitled to compensation and to reimbursement
17 for expenses as follows:

1 (1) COMPENSATION. (a) Subject to the court's approval, as determined under par.
2 (b), a guardian shall receive reasonable compensation for the guardian's services.

***NOTE: Who pays if the ward's estate does not? Does the county pay if the ward is indigent?

3 (b) The court shall use all of the following factors in deciding whether
4 compensation for a guardian is just and reasonable:

5 1. The reasonableness of the services rendered.

6 2. The fair market value of the service rendered.

7 3. The necessity of the services.

***NOTE: Isn't this the same as reasonableness?

8 3 4. Any conflict of interest of the guardian.

9 4 5. The availability of another to provide the services.

10 5 6. The value of the ward's estate. and nature

11 6 7. The hourly or other rate proposed by the guardian for the services. ✓

***NOTE: Is the rate charged by the guardian your intent?

12 (c) The amount of the compensation may be determined on an hourly basis, as
13 a monthly stipend, or on any other basis that the court determines is reasonable
14 under the circumstances. The court may establish the amount or basis for computing
15 the guardian's compensation at the time of the guardian's initial appointment.

16 (2) REIMBURSEMENT OF EXPENSES. The guardian shall be reimbursed for the
17 amount of the guardian's reasonable expenses incurred in the execution of the
18 guardian's duties, including necessary compensation paid to an attorney, an
19 accountant, a broker, and other agents or service providers.

***NOTE: The language "shall be reimbursed" comports with the memo.

NOTE: Please see the * NOTE under sub. (1) (a).

(3) WHEN COURT APPROVAL REQUIRED. A court must approve compensation and reimbursement of expenses before payment to the guardian is made, but court approval need not be obtained before charges are incurred.

54.74 Compensation of guardian ad litem. ~~On order of the court, the guardian ad litem appointed under this chapter shall be allowed reasonable compensation to be paid by the county of venue, unless~~ Unless the court otherwise directs ~~or unless the guardian ad litem is appointed for a minor, in which case the compensation of the guardian ad litem shall be paid by the minor's parents or the county of venue as provided in s. 48.235 (8), the court shall order reasonable compensation to be paid by the county of venue to a guardian ad litem appointed under s. 54.40 (1).~~ If the court orders a county to pay the compensation of the guardian ad litem, the amount ordered may not exceed the compensation paid to a private attorneys attorney under s. 977.08 (4m) (b). The guardian ad litem shall receive compensation for performing all duties required under s. 54.40 (4) and for any other acts that are approved by the court and are reasonably necessary to promote the ward's best interests.

from the ward's estate, if sufficient, or, if insufficient, by the county of venue

SUBCHAPTER VI

VOLUNTARY PROCEEDINGS;

CONSERVATORS

is unwilling or

move to P.80, line 1

54.76 Conservator; appointment; duties and powers; termination. (1)

Any adult resident who believes that he or she is unable properly to manage his or her property or income may voluntarily apply to the circuit court of the county of his or her residence for appointment of a conservator of the estate. Upon receipt of the application, the court shall fix a time and place for hearing the application and direct to whom and in what manner notice of the hearing shall be given. ~~(7) If an~~

, including presumptive adult heirs,

may
to a potential recipient of the notice, unless the potential recipient has waived receipt.

move
handwritten
material
from bottom of
p. 79

individual whose
estate is under
conservatorship

1 application for conservatorship is filed, the The fee prescribed in s. 814.66 (1) (b) shall
2 be paid at the time of the filing of the inventory or other documents setting forth the
3 value of the estate. individual whose
estate is under
conservatorship.

****NOTE: I consolidated these provisions because, otherwise, they seem out of place sequentially.

INSERT
80-3

4 (2) At the time of such hearing for appointment of a conservator, the applicant
5 shall be personally examined and if the court is satisfied that the applicant desires
6 a conservator and that the fiduciary nominated is suitable, the court may appoint the
7 nominee as conservator and issue letters of conservatorship to the nominee upon the
8 filing of a bond in the amount fixed by the court. by the court

****NOTE: Do you want any specification as to who (a physician, psychologist?) should examine the applicant?

INSERT 80-18

LPS:
fix
insertion
point

9 (3) A conservator shall have has all the powers and duties of a guardian of the
10 property estate of an incompetent person. The conservator's powers shall cease upon
11 being removed by the court or upon death of the person whose estate is being
12 conserved individual who is appointed a guardian under s. 54.10.

INSERT 80-12A

13 (4) Any person individual whose estate is under conservatorship may apply to
14 the court at any time for termination thereof of the conservatorship or for
15 appointment of a successor conservator. Upon such receipt of the application, the

including
an

16 court shall fix a time and place for hearing and direct that 10 days' notice by mail be
17 given to the person's guardian, if any, the conservator and the presumptive heirs of

18 the applicant. Upon such At the hearing, the court shall, unless it is clearly shown
19 that the applicant is an incompetent, remove the conservator and order the property

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20 restored to the applicant, or if the applicant so desires and the nominee is suitable,
21 the court may appoint a successor conservator. (5) If the court shall upon such

UNBOLD
PERIOD

22 hearing determine determines at the hearing that the person, individual whose estate is

RESTORE TO
PLAIN TEXT

individual's

If the person or agent under a power
of attorney for health care

may not be
terminated unless

- 1 administered by a conservator may be incapable of handling his or her estate, the
 2 court shall order the conservatorship continued, or, if the applicant so desires and the
 3 a nominee is suitable, the court may appoint a successor conservator.

INSERT 81-3

****NOTE: Because of sub. (3) (renumbered from s. 880.31 (3)) and sub. (6) (created as s. 54.76 (6)), the language about giving notice to the person's guardian makes no sense, and I have therefore stricken it.

****NOTE: I have consolidated s. 880.31 (4) and (5), because, under current law, s. 880.31 (4) seems to internally conflict, and because both subsections address actions that are the outcome of a hearing held for termination of a conservatorship. With respect to the internal conflict in s. 880.31 (4), it seems to me that if the applicant is not shown to be an incompetent and has requested termination of the conservatorship that the court would not then appoint a successor conservator—that appointment would, I believe, occur only if the court has determined that the applicant continues to be incapable of handling the estate. Please review my changes.

- 4 (5) Appointment of a conservator shall not be does not constitute evidence of

5 the competency or incompetency of the person whose estate is being administered.

INSERT 81-5

- 6 (6) The powers of a conservator cease upon removal by the court or upon
 7 appointment of a guardian for or the death of the individual whose estate is
 8 conserved.

****NOTE: I did not include language about removal "for cause" as in your proposal, because, under s. 54.76 (4) (consolidated, renumbered, and amended from s. 880.31 (4) and (5)), no cause for appointment of a successor conservator appears to be required, but, instead, the application of the conserved individual for a change seems to suffice. However, shouldn't there be a provision that specifically authorizes (or requires) the court to remove the conservator for cause?

INSERT 81-8 A

INSERT 81-8 B 9

- 10 757.48 (1) (a) Except as provided in s. 879.23 (4), in all matters in which a
 11 guardian ad litem is appointed by the court, the guardian ad litem shall be an
 12 attorney admitted to practice in this state. In order to be appointed as a guardian
 13 ad litem under s. 767.045, an attorney shall have completed 3 hours of approved
 14 continuing legal education relating to the functions and duties of a guardian ad litem
 under ch. 767. In order to be appointed as a guardian ad litem under s. 54.40 (1), an

removes
the
conservator
on the
court's
own
motion
or
under
sub.
(4).

- 1 attorney shall have completed ^{any} 3 hours of approved continuing legal education
- 2 relating to the functions and duties of a guardian ad litem under ch. 54.

3 (END)

requirements

D - NOTE

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0039/P2insMG

MBL

INSERT 1-1

SECTION 1. 29.024(2u) of the statutes is created to read:

29.024 (2u) REVOCATION OF HUNTING LICENSES BASED ON INCOMPETENCY. The department shall revoke any license authorizing hunting issued to a person for whom the department receives a record of a declaration under s. 54.25 (2) (b) 1. d. stating that the person is incompetent to apply for a hunting license under this chapter.

SECTION 2. 29.161 of the statutes is amended to read:

29.161 Resident small game hunting license. A resident small game hunting license shall be issued subject to s. ss. 29.024 and 54.25 (2) (b) 1. d. by the department to any resident applying for this license. The resident small game hunting license does not authorize the hunting of bear, deer, elk, or wild turkey.

History: 1973 c. 90 s. 538; 1973 c. 315; 1979 c. 34; 1983 a. 27; 1991 a. 39; 1997 a. 27; 1997 a. 248 s. 193; Stats. 1997 s. 29.161; 2001 a. 109.

SECTION 3. 29.164 (3) (e) of the statutes is amended to read:

29.164 (3) (e) *Notification; issuance; payment.* The department shall issue a notice of approval to those qualified applicants selected to receive a wild turkey hunting license. A person who receives a notice of approval and who pays the fee in the manner required by the department shall be issued a wild turkey hunting license subject to ss. 29.024 and 54.25 (2) (b) 1. d.

History: 1981 c. 262; 1983 a. 27, 192; 1985 a. 332 s. 253; 1987 a. 399; 1989 a. 31, 73; 1991 a. 39, 77, 269; 1995 a. 27; 1997 a. 27, 168; 1997 a. 248 ss. 212 to 230; Stats. 1997 s. 29.164; 1997 a. 249 s. 21; 1999 a. 9, 32; 2001 a. 18; 2003 a. 67.

SECTION 4. 29.171 (1) of the statutes is amended to read:

29.171 (1) A resident archer hunting license shall be issued subject to s. ss. 29.024 and 54.25 (2) (b) 1. d. by the department to any resident applying for this license.

History: 1973 c. 90 s. 538; 1977 c. 232; 1979 c. 34; 1983 a. 27; 1985 a. 270; 1987 a. 353; 1989 a. 31; 1991 a. 39, 77; 1995 a. 293; 1997 a. 27, 16 235; Stats. 1997 s. 29.171; 1997 a. 249 s. 25; 1999 a. 32; 2001 a. 18, 109.

SECTION 5. 29.173 (1) of the statutes is amended to read:

INSERT 1-1

29.173 (1) ISSUANCE. A resident deer hunting license shall be issued subject to ~~ss. 29.024 and 54.25 (2) (b) 1. d.~~ by the department to any resident applying for this license.

History: 1973 c. 90 s. 538; 1979 c. 34; 1983 a. 27; 1985 a. 270; 1993 a. 258; 1997 a. 27; 1997 a. 248 ss. 236 to 239; Stats. 1997 s. 29.173.

SECTION 6. 29.182 (4m) of the statutes is amended to read:

29.182 (4m) LIMITATION OF ONE LICENSE. A person may be issued, or transferred under ~~par. (g) sub. (4) (g),~~ only one resident elk hunting license in his or her lifetime, and the resident elk hunting license shall be valid for only one elk hunting season. The issuance, or transfer under ~~par. (g) sub. (4) (g),~~ of the license to the person is subject to ~~ss. 29.024 (2g) and 54.25 (2) (b) 1. d.~~

NOTE: NOTE: The correct cross-reference is shown in brackets. Corrective legislation is pending. NOTE:

History: 2001 a. 109.

SECTION 7. 29.184 (6) (c) 1r. of the statutes is amended to read:

29.184 (6) (c) 1r. The department shall issue a notice of approval to those qualified applicants selected to receive a Class A bear license. A person who receives a notice of approval and who pays the fees required for the license shall be issued the license subject to ~~ss. 29.024 (2g) and 54.25 (2) (b) 1. d.~~

History: 1985 a. 270; 1997 a. 1 ss. 57 to 74, 77; 1997 a. 27, 191; 1997 a. 248 ss. 255 to 269; Stats. 1997 s. 29.184; 1997 a. 249 ss. 28 to 32; 1999 a. 9, 32, 186; 2001 a. 55; 2003 a. 59.

SECTION 8. 29.184 (6) (c) 2. of the statutes is amended to read:

29.184 (6) (c) 2. A Class B bear license shall be issued subject to ~~ss. 29.024 (2g) and 54.25 (2) (b) 1. d.~~ by the department to any resident who applies for this license.

History: 1985 a. 270; 1997 a. 1 ss. 57 to 74, 77; 1997 a. 27, 191; 1997 a. 248 ss. 255 to 269; Stats. 1997 s. 29.184; 1997 a. 249 ss. 28 to 32; 1999 a. 9, 32, 186; 2001 a. 55; 2003 a. 59.

SECTION 9. 29.231 (1) of the statutes is amended to read:

29.231 (1) A resident sports license shall be issued subject to ~~ss. 29.024 and 54.25 (2) (b) 1. d.~~ by the department to any resident who applies for this license, and

1 a nonresident sports license shall be issued subject to s. 29.024 by the department
2 to any person who is not a resident and who applies for the license. ✓

History: 1973 c. 90 ss. 166, 538; 1973 c. 145; 1979 c. 34; 1983 a. 27; 1995 a. 27; 1997 a. 27; 1997 a. 248 ss. 333 to 337; Stats. 1997 s. 29.231.

3 **SECTION 10.** 29.235 (1) of the statutes is amended to read:

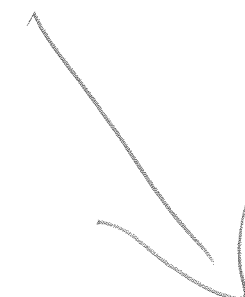
4 29.235 (1) ISSUANCE. A resident conservation patron license shall be issued
5 subject to ~~s. ss.~~ 29.024 and 54.25 (2) (b) 1. d. ^(c) by the department to any resident 14
6 years old or older who applies for the license. A nonresident conservation patron
7 license shall be issued subject to s. 29.024 by the department to any person 14 years
8 old or older who is not a resident and who applies for the license.

History: 1983 a. 27; 1987 a. 27; 1991 a. 39, 269; 1993 a. 213; 1995 a. 27; 1997 a. 1, 27; 1997 a. 248 ss. 338 to 344; Stats. 1997 s. 29.235; 2001 a. 109.

9 **SECTION 11.** 29.512 (1) of the statutes is amended to read:

10 29.512 (1) No person may engage or be employed for any compensation or
11 reward to guide, direct or assist any other person in hunting, fishing or trapping
12 unless the person is issued a guide license by the department subject to s. 29.024 and ^{ss.}
13 54.25 (2) (b) 1. d. No guide license for hunting or trapping may be issued to or
14 obtained by any person who is not a resident of this state. No guide license may be
15 issued to any person under the age of 18 years. The holder of a guide license shall
16 comply with all of the requirements of this chapter.

History: 1975 c. 365; 1981 c. 390 s. 252; 1983 a. 27; 1991 a. 39; 1997 a. 248 s. 379; Stats. 1997 s. 29.512.



1-1
INSERT ~~3-2~~

P. 48
4

Section #. 46.011 (intro.) of the statutes is amended to read:

54

46.011 Definitions. (intro.) In chs. 46, 48, 50, 51, 55 and 58:

History: 1975 c. 39, 430; 1977 c. 29; 1979 c. 221; 1985 a. 29 s. 3202 (23); 1987 a. 27; 1989 a. 31; 1993 a. 16, 27, 479; 1995 a. 27 ss. 2022, 9126 (19).

End of INSERT 1-1

INSERT 1-2

***** NOTE: With respect to psychotropic medication, this is what I have done ^{either} in this redraft or previously in LRB-0034/PI:

a. Repealed s. 880.01 (7m), stats. (the definition of "not competent to refuse psychotropic medication", previously renumbered as s. 54.01 (11)).

b. Created s. ~~880.01~~ (18), a definition of "psychotropic medication," based on the legislative Council draft WLC: 0220/PI.

c. Repealed s. 880.07 (1m), stats. (allegations in a petition that a person is incompetent to refuse psychotropic medication).

d. Stricken reference to incompetence to ^{refuse} refuse psychotropic medication from s. 54.36 (renumbered from s. 880.33 (1), stats.).

e. Repealed s. 880.33 (4m) and (4r), stats. (court appointment of guardian to consent or refuse, standard for forcible administration).

INSERT 1-2

f. Repealed s. 880.34 (6), state, , as does
WLC: 0220/PI (annual review, etc.).

g. Added to s. 54.25 (2)(d) 2. a. language
from WLC: 0220/PI concerning voluntary
receipt by a ward of medication, including
psychotropic medication, if the ward does
not protest, prohibiting the ^{involuntary} administration
of psychotropic medication, defining "protest"
and creating a best interest standard.

h. Repealed s. 880.33(2)(d), state. (hearing
on petition).

Please see my Drafter's Note concerning this
topic and its treatment in this draft.

End of
Note

INSERT 2-4

(4) "Degenerative brain disorder" means an individual's loss or disfunction of brain cells to the extent that the individual is substantially impaired in ability to provide for his or her own care or custody.

**** NOTE: This is the definition (revised grammatically) from WLC:0037/1.

Does one provide for one's own custody?
End of **** NOTE

(5) "Depository account" has the meaning given in s. 815.18(2)(e).

INSERT 2-5

***** NOTE: I have renumbered most of the definitions in this draft, to account for added definitions. This subsection was originally numbered (3m) as a time-saving measure. In addition, I have not added "or s. 243.10" as requested. The definition under s. 243.07(1)(a) subsumes the form for the Wisconsin basic power of attorney for finances and property under s. 243.10; in addition, s. 243.10 is not a definition per se; and, lastly, a defined term in the statutes that refers to another defined term may have only one referent (i.e., it may not be defined to be "A" or "B").

(I)

***** NOTE: Note that I have not included your proposed definition of evaluative "evaluative capacity." Please see the ***** NOTE under the definition of "incapacity."

End of NOTES

INSERT 2-9

**** NOTE: I did not include corporate guardians, entity guardians in this definition as requested. Please look at the definition of "person" in s. 990.01 (26) ^{Stats.} (which applies to all the statutes). It encompasses corporate guardians and entity guardians. This definition indicates that only a guardian of the estate is appointed for a spendthrift; correct? ✓

End of NOTE

(B) (9) "Guardian of the person" means a guardian comply with the duties specified in s. 54.25(1) and to appointed to exercise any of the powers specified in s. 54.25 (2).

(B) (8) "Guardian of the estate" means a comply with the duties specified in s. 54.19 and to guardian appointed to exercise any of the powers specified in s. 54.20. ✓

reverse order

INSERT 2-10

(B)
(10) "Incapacity" means the inability of an individual effectively to receive and evaluate information or to communicate a decision with respect to the exercise of a right or power.

On Betsy Abramson's advice,
***** NOTE: this definition is the same language as that proposed in your "Appendix: Alternative Language" as the definition of "evaluative capacity," except that: (1) It is written in the negative (i.e., "inability," rather than "ability"); (2) I omitted "make [a decision]" because that seems redundant to "communicate a decision"; ^{and} (3) I omitted "decisionmaking," because that seems unnecessary (all powers of an individual would appear to require

INSERT 2-10

some form of decisionmaking). Note that this definition replaces use of the terms "incapacity," "functional capacity," ^{and} "evaluative capacity" throughout the draft, except for the term "incapacity of the guardian," which has been changed to "inability of the guardian." This change particularly affects the following: 54.01(21), 54.15(4), 54.21(6)(a) and (c), 54.52(2), and 54.68(2)(f).

After studying the issue further, I did not ^I

change the term "incapacitated" as it is

(renumbered from s. 50.06, stat.)

used in numerous places in s. 54.50(2); use

of that term in that subsection is subject to the

definition of the term in s. 54.50(2)(a), which

limits the individual lack of capacity to health

care decisions; I would think that you would

want to keep this limitation. Please review.

(End of NOTE)

INSERT 3-12

***NOTE: I have repealed the definition
of "incompetent" that was ^{amended} under 03-0039/PI, because
the new language proposed for s. 54.10 replaces the definition.
I also have not drafted the definition
of "individual found incompetent" that
was proposed, because, where the term is
used, reference to s. 54.10 can be added and
the defined term is then unnecessary. See, for
example, this treatment in s. 54.01(7).

~~NOTE~~ NOTE

End B

INSERT 4-16

*** NOTE : Please note that I retained
"or," rather than using "and" as proposed for
s. 54.01 (12)(a) 2, 3, and 4, to avoid the implication
that all persons specified would be collectively
required to function as "interested persons". Also,
your instructions were unclear: do you wish to
retain "fiduciary" in the phrase "appointed
to act as ... " ?

INSERT 5-17

**** NOTE: I did not draft the language you proposed as a change to this subdivision from the language in ^{LRB}-0039/PI, because, under your wording, the corporation counsel of the county in which the petition is filed would only ^I ~~be~~ ^{be} included if the petition was filed in a county ^I other than the county of the proposed ward's residence; I assumed that this result is not what you intend.

End of Note

INSERT 6-1

**** NOTE: Please note that I did not make the change from "any" to "all," so as to avoid the implication that an "interested person" must include all those specified.

End of
NOTE

INSERT 6-5

(13) "least restrictive" means that which places the least possible restriction on personal liberty and the exercise of rights and that promotes the greatest possible integration of an individual into his or her community that is consistent with meeting his or her essential requirements for health, safety, habilitation, treatment, and recovery and protecting him or her from abuse, exploitation, and neglect.

***** NOTE: I did not draft "constitutional" to modify rights; presumably, you don't want to limit the person to constitutionally-guaranteed rights to the exclusion of statutory rights.

End of ***** NOTE

INSERT 7-3

(16) ⁸ "Proposed ward" means an individual, including a minor, a person alleged to be incompetent, and an alleged spendthrift, for whom a petition for guardianship is filed.

**** NOTE: Please review this definition. Because you have decided to include spendthrifts in ch. 54, use of this definition eliminates the necessity of specifying spendthrifts throughout the chapter, as does the definition of "ward."

End of
INSERT

11/28/2003

L75

WLC: 0220/P11

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2

(18)

(B)

1 (3) In this section, "psychotropic medication" means a prescription drug, as defined in
2 s. 450.01 (20), that is used to treat or manage a psychiatric symptom or challenging behavior.

3 (4) In addition to the other requirements of ch. 55 pertaining to petitions for protective
4 services, a petition under this section shall allege the following:

5 (a) A physician has prescribed psychotropic medication for the person.

6 (b) The person is not competent to refuse psychotropic medication. "Not competent
7 to refuse psychotropic medication" means that as a result of developmental disabilities,
8 degenerative brain disorder, serious and persistent mental illness, or other like incapacities,
9 and after the advantages and disadvantages of and alternatives to accepting the particular
10 psychotropic medication have been explained to the individual, the individual is incapable of
11 expressing an understanding of the advantages and disadvantages of accepting treatment, and
12 the alternatives to accepting treatment, or the individual is substantially incapable of applying
13 an understanding of the advantages, disadvantages, and alternatives to treatment to his or her
14 condition in order to make an informed choice as to whether to accept or refuse psychotropic
15 medication.

16 (c) The person has refused to take the psychotropic medication voluntarily or
17 attempting to administer psychotropic medications to the person voluntarily is not feasible or
18 is not in the best interests of the person. If the petition alleges that the person has refused to
19 take psychotropic medication voluntarily, the petition shall identify the reasons the person
20 refuses to take psychotropic medication voluntarily and shall contain evidence showing that
21 a reasonable number of documented attempts to administer psychotropic medication
22 voluntarily using appropriate interventions that could reasonably be expected to increase the
23 person's willingness to take psychotropic medication voluntarily have been made and have
24 been unsuccessful. If the petition alleges that attempting to administer psychotropic